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Crl.R.C.No.1402 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1402 of 2017

D.Shankar

... Petitioner

VS.

State Rep. by
The Inspector of Police,
Tiruppur North.

... Respondent

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to set aside the order of the learned Principal Sessions Judge at Tiruppur in C.A.No.4 of 2017 dated 24.07.2017 confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Tiruppur made in C.C.No.70 of 2011 dated 27.12.2016.

For Petitioner

: Mr.J.Franklin

For Respondent

: Mr.L.Baskaran
Government Advocate
(Criminal Side)

ORDER

This Criminal Revision case has been filed against the judgment and order



passed by the learned Principal Sessions Judge, Tiruppur in C.A.No.4 of 2017, dated 24.07.2017, dismissing and confirming the judgment and order passed by the learned Judicial Magistrate-I, Tiruppur in C.C.No.70 of 2011, dated 27.12.2016, convicting the petitioner for offence under Section 304 A of IPC and sentencing him to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/- and in default to undergo one month rigorous imprisonment.

2.The case of the prosecution is that on 04.08.2008, at about 12.15 noon, the petitioner was driving a water tanker lorry at Kongu Main Road. It is alleged that the petitioner drove the vehicle in a rash and negligent manner and he had hit a cycle from behind, as a result of which, the cyclist Ganesan sustained fatal injuries and died.

3.The relative (PW1) of the deceased Ganesan gave a complaint (EX.P1) on 04.08.2008 at about 4.15 p.m. and PW7 registered an FIR (EX.P4) in Crime No.1198 of 2008 for offence under Sections 279 and 304 A of IPC.

4.The investigation was taken up by PW8 and he went to the scene of occurrence at about 5 p.m. and prepared the Observation Mahazer (EX.P2) and the Rough Sketch (Ex.P5) in the presence of PW3 and one Nataraj. Thereafter,



PW8 conducted the inquest on the dead body of the deceased on 05.08.2008 at 7 a.m. at Government Hospital, Tiruppur in the presence of Panchayatars and the Inquest Report was marked as Ex.P6. The dead body was sent for post-mortem and the post-mortem was conducted by PW6 and the Post-mortem Report was marked as Ex.P3. The following injuries were noted in the Post-mortem Certificate:

External injuries :

1.Abrasion (4 x 5 cm) over ® chest. 2.Abrasion (2 x 3 cm) over ® shoulder 3. Abrasion (7 x 2 cm) over ® arm. 4. Abrasion (3 x 3 cm) over centre of the chin.

5.PW6 gave a final opinion to the effect that the deceased would appear to have died of shock and haemorrhage due to internal organ injuries.

6.PW8 arrested the petitioner on 05.08.2008 at about 2 p.m. and he was produced before the Court and remanded to judicial custody. Thereafter, the lorry driven by the petitioner was sent for inspection to the Motor Inspector and the report of the Motor Inspector was marked as Ex.P7. As per the report, the vehicle was in order and the accident was not due to any mechanical defect of the vehicle.



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7.PW8 recorded the statements of the witnesses under Section 161 (3) of Cr.P.C., and ultimately concluded the investigation and filed the final report before the trial Court.

8.The Trial Court framed charges against the petitioner for offence under Section 304 A of IPC. The petitioner denied the charge when he was questioned. The prosecution examined PW1 to PW8 and marked Ex.P1 to Ex.P7. The incriminating evidence that was gathered during the course of trial was put to the petitioner when he was questioned under 313 (1)(b) of Cr.P.C., and the petitioner denied the same as false.

9.The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly, convicted and sentenced the petitioner for offence under Section 304 A of IPC.

10.The petitioner aggrieved by the judgment of the Trial Court, filed an



appeal and the same was heard by the Principal Sessions Judge, Tiruppur in C.A.No.4 of 2017. The Appellate Court confirmed the judgment of the Trial Court and accordingly, dismissed the appeal by judgment and order dated 24.07.2017. Aggrieved by the same, the present criminal revision case has been filed before this Court.

11.Heard Mr.J.Franklin, learned counsel appearing on behalf of the petitioner and Mr.L.Baskaran, learned Government Advocate (Criminal Side) appearing on behalf of the respondent.

12.The main ground that was urged by the learned counsel for the petitioner is that the deceased Ganesan, who was riding the cycle had dashed on the left side of the back wheel of the lorry and he fell down and died. In view of the same, the story of the prosecution that the lorry had hit the rear side of the cycle, is totally unbelievable. It was further submitted that both the Courts below did not properly appreciate this crucial factor and went wrong in convicting and sentencing the petitioner for offence under Section 304 A of IPC.

13.PW1, who is the relative of the deceased was examined as an eye witness. He has stated that the lorry was driven in a rash and negligent manner



and the deceased who was riding the cycle was hit and he fell down and sustained grievous injuries. The evidence of PW2, who was also an eye witness, is in line with the evidence of PW1.

14.Both the Courts below after carefully considering the eye witness account and the rough sketch, came to a conclusion that it was a 30 feet road and the accident had taken place within five feet at the left corner which means that the lorry was occupying nearly 15 feet of the road. In view of the same, the lorry had come very close to the connecting road on the left side and the cycle driven by the deceased was hit and the deceased was thrown away and he sustained fatal injuries. Both the Courts concurrently held that this accident would not have happened if the lorry had been driven carefully and the accident was only due to the rash and negligent manner in which the water tanker lorry was driven by the petitioner.

15.In the considered view of this Court, reappraisal of evidence is not permissible while exercising revisional jurisdiction. This Court must only see if the findings of the Courts below suffers from perversity. The Courts below have appreciated the evidence and have come to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the petitioner. To



Crl.R.C.No.1402 of 2017

come to such a finding, cogent reasons have also been assigned. Hence, this Court is not able to see any perversity on the findings of the Courts below and the same does not warrant the interference of this Court.

16.In the result, this criminal revision case is dismissed and the judgment of both the Courts below are sustained. The petitioner was enlarged on bail by this Court by an order dated 07.11.2017 in Crl.M.P.Nos.13756 and 13758 of 2017. Since this revision petition is dismissed, the petitioner is directed to surrender before the Trial Court, within a period of two weeks to undergo the sentence. If the petitioner does not surrender, the Trial Court shall take immediate steps to secure the petitioner and send him to jail to undergo the sentence.

07.03.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

- 1.The Principal Sessions Judge, Tiruppur.
- 2.The Judicial Magistrate No.1, Tiruppur.
- 3.The Inspector of Police, Tiruppur North.
- 4.The Public Prosecutor,



High Court, Madras.

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Crl.R.C.No.1402 of 2017



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Crl.R.C.No.1402 of 2017

N. ANAND VENKATESH, J.

SSR

Crl.R.C.No.1402 of 2017

07.03.2023